

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII

12 APPEARANCES:

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23 United States District Court
300 Ala Moana Boulevard
24 Honolulu, Hawaii 96850

25 Proceedings recorded by machine shorthand, transcript produced
with computer-aided transcription (CAT).

1 May 6, 2025 9:01 a.m.

09:01AM 2 THE CLERK: Criminal Number 19-00099-DKW-KJM, United

09:01AM 3 States of America versus Defendant (09) Norman L. Akau, III.

09:01AM 4 This case has been called for sentencing to Count 1 of

09:01AM 5 the superseding indictment and a motion regarding sentencing.

09:01AM 6 Counsel, please make your appearances for the record.

09:01AM 7 MR. NAMMAR: Good morning, Your Honor. Michael Nammar

09:01AM 8 for the United States; also with me is Aislinn Affinito as

09:01AM 9 well.

09:01AM 10 THE COURT: Good morning.

09:01AM 11 MR. FLORES: Good morning, Your Honor. Ramiro Flores

09:01AM 12 on behalf of Mr. Akau who is present. I'm also accompanied by

09:01AM 13 Mr. Enright who is local counsel, Your Honor.

09:01AM 14 THE COURT: Good morning to all three of you.

09:01AM 15 Ms. Nieling, good morning to you.

09:01AM 16 You may be seated.

09:01AM 17 On June 9th of 2021, it's been nearly four years now

09:01AM 18 that the defendant, Mr. Akau, pled guilty; he did so pursuant

09:01AM 19 to a plea agreement with the United States to Count 1 of the

09:02AM 20 superseding indictment, which was the operative indictment at

09:02AM 21 that time. Count 1 charged the defendant with violating the

09:02AM 22 racketeering laws of the United States.

09:02AM 23 Have counsel now had an opportunity to read, review,

09:02AM 24 and discuss the revised PSR dated March 17th of this year and

09:02AM 25 to provide the Court with any comments on or objections to the

09:02AM 1 contents of that report?

09:02AM 2 MR. NAMMAR: Yes, Your Honor.

09:02AM 3 MR. FLORES: Yes, Your Honor.

09:02AM 4 THE COURT: All right. I'm aware of a number of

09:02AM 5 objections all from the defense side that it appears the Court

09:02AM 6 needs to resolve. So I'm going to describe these objections

09:02AM 7 one at a time, as I understand them, and of course if I have

09:02AM 8 not accurately described them, one or both attorneys may

09:02AM 9 provide that clarification. And then, of course, if either

09:02AM 10 side also wishes to be heard further with regard to any of

09:03AM 11 these objections, beyond what has been provided in writing to

09:03AM 12 me, all of which I've read, you may certainly do that as well.

09:03AM 13 The first objection is the following: The defendant

09:03AM 14 objects to the racketeering act number three as described in

09:03AM 15 the PSR; that is the murder for hire of Elgin Calles, according

09:03AM 16 to the defense. That incident -- that event should not be used

09:03AM 17 at least in his guideline calculations because doing so would

09:03AM 18 run contradictory to a number of different documents including

09:03AM 19 paragraph 21(e) of his plea agreement, government

09:03AM 20 communications dated April 23rd and June 7th of 2021, both of

09:03AM 21 which are attached to defendant's sentencing statement, and

09:03AM 22 finally by the government's statements during Mr. Akau's change

09:04AM 23 of plea hearing.

09:04AM 24 According to Mr. Akau, he and his former counsel

09:04AM 25 specifically bargained for the exclusion of the Calles incident

09:04AM 1 from the guideline calculations, and it would be unjust for the
09:04AM 2 opposite to then occur.

09:04AM 3 The Court also notes that the defendant appears not to
09:04AM 4 object to the consideration of the Calles incident for all
09:04AM 5 sentencing purposes, only for the determination of the
09:04AM 6 appropriate guideline range.

09:04AM 7 Does anyone wish to be heard further with respect to
09:04AM 8 that objection?

09:04AM 9 MR. NAMMAR: Yes, Your Honor.

09:04AM 10 THE COURT: Mr. Nammar.

09:04AM 11 MR. NAMMAR: Regarding this particular argument, I
09:04AM 12 think Mr. Akau is essentially asking to undo time, but that's
09:04AM 13 not realistic given the fact pattern. Akau told us about the
09:04AM 14 murder for hire conspiracy before he pled guilty. And when he
09:04AM 15 did that, he was under a signed proffer agreement which said
09:04AM 16 that the government could make derivative use of the
09:05AM 17 information that he provides.

09:05AM 18 And then after that the plea hearing came and the plea
09:05AM 19 agreement comes, and we didn't then give him statutory immunity
09:05AM 20 for that crime in the plea agreement. The plea agreement
09:05AM 21 doesn't supersede the proffer agreement, rather it specifically
09:05AM 22 references it in paragraph 24 of the plea agreement. The
09:05AM 23 defense makes a lot of citations to Mr. Inciong's email, but
09:05AM 24 all the email does is just repeat what the terms of the plea
09:05AM 25 agreement are in paragraph 21.

09:05AM 1 It says his own words, as in Mr. Akau's own words,
09:05AM 2 can't be used against him. And that's what was said on the
09:05AM 3 record in the plea hearing and that's what we have stuck by.
09:05AM 4 The record is also clear from the information that we cited
09:05AM 5 that both before and after Mr. Akau's plea we had independent
09:05AM 6 evidence of the Elgin Calles murder for hire conspiracy.

09:06AM 7 Take, for example, Wayne Miller's sworn under-oath
09:06AM 8 testimony before the grand jury where he said that Miske wanted
09:06AM 9 to home run Calles and that Miller was stocking Calles with
09:06AM 10 others, and that Miller wanted to, along with Miske, kill
09:06AM 11 Calles so they could place whoever they wanted at the port.

09:06AM 12 And after the plea we had ample independent evidence
09:06AM 13 as well. Take, for example, the trial testimony of Harry Kauhi
09:06AM 14 who testified that the purpose of the murder for hire
09:06AM 15 conspiracy was done to place individuals at jobs at the ports.
09:06AM 16 Mr. Akau specifically said that he agreed to the murder for
09:06AM 17 hire to get a job at the port, something that is of pecuniary
09:06AM 18 value.

09:06AM 19 In the most recent supplement, the defense adds the
09:06AM 20 Ronald Richard's declaration. That particular declaration
09:06AM 21 completely contradicts what's in the proffer agreement, what's
09:07AM 22 in the plea agreement, and the statements that Mr. Richard made
09:07AM 23 before the plea hearing. As Your Honor may recall, at the plea
09:07AM 24 hearing, specifically Mr. Richards, along with the government,
09:07AM 25 said that the only thing that was protective was Mr. Akau's

09:07AM 1 statements. And so we have done that, and we have honored
09:07AM 2 that, and I'm happy to answer any questions that the Court
09:07AM 3 asks.

09:07AM 4 THE COURT: I don't have any questions, thank you.
09:07AM 5 Mr. Flores, anything with regard to this objection
09:07AM 6 only?

09:07AM 7 MR. FLORES: Yes, Your Honor. Thank you.
09:07AM 8 Your Honor, the record is clear. The government
09:07AM 9 continuously represented that that particular hit, murder for
09:07AM 10 hire offense, was not going to be considered relevant conduct.
09:07AM 11 All the way up until the preparations for Mr. Akau's testimony,
09:07AM 12 if you look at Jessica Turk's declaration, Your Honor, she took
09:07AM 13 copious notes of everything that was discussed. And the last
09:08AM 14 time that the government again reiterated that the relevant
09:08AM 15 conduct was not going to be used was to her while Mr. Akau was
09:08AM 16 being prepared for his testimony. That was in April of 2024,
09:08AM 17 Your Honor.

09:08AM 18 THE COURT: Why is a paralegal's notes or an
09:08AM 19 investigator's notes of any relevance when I have a proffer
09:08AM 20 agreement and a written plea agreement?

09:08AM 21 MR. FLORES: Well, Your Honor, it's not a paralegal's
09:08AM 22 notes. It's Ms. Turk's particular notes, and she is an officer
09:08AM 23 of this Court. She prepared an affidavit, she was sworn under
09:08AM 24 oath, this is exactly what happened.

09:08AM 25 THE COURT: It still doesn't make any difference,

09:08AM 1 right?

09:08AM 2 MR. FLORES: Well, it does, Your Honor. When you look

09:08AM 3 at the case law, one, any ambiguity in the plea, when you have

09:08AM 4 this proffer, the proffer itself says we can use derivative

09:08AM 5 statements or derivative evidence. The plea agreement does

09:08AM 6 not, and there is some ambiguity there. And the government is

09:08AM 7 pouncing on that because you must understand, Your Honor, I

09:08AM 8 have argued that the government has always maintained in every

09:09AM 9 single declaration to Mr. Richard's declarations to Mr. Akau

09:09AM 10 personally and also to Ms. Turk, which are both of his prior

09:09AM 11 attorneys, they have always maintained that he would not be

09:09AM 12 punished through the guidelines with that statement that he

09:09AM 13 made.

09:09AM 14 Now, the government makes an argument that they knew

09:09AM 15 about it already. Your Honor, the evidence is clear that they

09:09AM 16 did not. What they knew about it --

09:09AM 17 THE COURT: It is.

09:09AM 18 MR. FLORES: Well, yes, if you look at every --

09:09AM 19 THE COURT: You don't think I haven't?

09:09AM 20 MR. FLORES: I know you have, Your Honor. But if you

09:09AM 21 look at every single report that they've submitted in their

09:09AM 22 response, every single one of them discusses an assault against

09:09AM 23 Mr. Calles. When Mr. Miller testified before the grand jury

09:09AM 24 and he uses the word "home run," he immediately says that at

09:09AM 25 one point Mr. Miske considered home running Mr. Calles, but

09:09AM 1 then immediately changes his mind and says, no, no, nothing
09:09AM 2 that severe. Let's go to a third base. That was his testimony
09:10AM 3 before the grand jury.

09:10AM 4 Prior to that, he never once mentioned to the
09:10AM 5 government that they wanted to kill Mr. Calles. They only
09:10AM 6 mentioned that they wanted to assault him. They were going to
09:10AM 7 assault him through Jacob Smith, they were following him with
09:10AM 8 the GPS trackers with Jacob Smith and Mr. Miller and also
09:10AM 9 Mr. Kauhi.

09:10AM 10 Not until 2021, when Mr. Akau comes in and does his
09:10AM 11 proffer, do they realize that it was much more sinister than
09:10AM 12 just an assault. It was a murder for hire that Mr. Miller had
09:10AM 13 basically lied about to the government for all this time and
09:10AM 14 including in front of the grand jury, Your Honor. It's clear
09:10AM 15 that he mentioned the word "home run," but then he immediately
09:10AM 16 said, no, no, he just wanted to basically third base him, which
09:10AM 17 is some type of assault. Maybe cripple him -- I think he uses
09:10AM 18 the word "cripple," things like that.

09:10AM 19 So the government was not aware of this prior to
09:11AM 20 Mr. Akau telling them. And they were --

09:11AM 21 THE COURT: They were aware of Mr. Calles, they were
09:11AM 22 aware that he was a target, what you are saying is they weren't
09:11AM 23 aware of how much damage they wanted to cause to him?

09:11AM 24 MR. FLORES: Absolutely. And that's important, Your
09:11AM 25 Honor, because under 1B1.8 he is being punished for a murder

09:11AM 1 for hire that he provided to the government. Not an assault.

09:11AM 2 If the Court wants to set the guidelines as an assault, a VICAR

09:11AM 3 assault, a Violent Crime in Aid of Racketeering, then that's

09:11AM 4 fine. That would be possible.

09:11AM 5 But the simple fact is that they were not aware of the

09:11AM 6 murder for hire. They were aware of an assault that was going

09:11AM 7 to occur. But again that's a completely distinct and separate

09:11AM 8 crime. So when you look at that and then you look at every

09:11AM 9 single instance where the government promised to Mr. Akau

09:11AM 10 through his attorneys that they would not use those -- that

09:11AM 11 particular offense to set his guidelines, that is when they

09:12AM 12 breached the plea agreement. When the PSR then uses that and

09:12AM 13 also the government supports the fact that it is a usable

09:12AM 14 offense because of the derivative evidence.

09:12AM 15 Your Honor, I did cite a case, it's a Third Circuit

09:12AM 16 Court case, Baird, and I think that particular case is very

09:12AM 17 important because the Ninth Circuit has never come to a

09:12AM 18 decision or never made a decision regarding this particular set

09:12AM 19 of facts. But Baird specifically stated that the government

09:12AM 20 can't end around 1B1.8 by using a codefendant's statements that

09:12AM 21 is made because of Mr. Akau's statement. In other words,

09:12AM 22 they've talked about Mr. Miller.

09:12AM 23 Now if Mr. Miller had talked about the Calles murder

09:12AM 24 before Mr. Akau, then there is no argument. But he didn't. He

09:12AM 25 talked about an assault against Mr. Calles. Had Harry Kauhi

09:13AM 1 talked about a murder against Mr. Calles before Mr. Akau, we
09:13AM 2 don't have an argument. But neither one of them did that. Not
09:13AM 3 until the government was aware about that did they then come
09:13AM 4 clean.

09:13AM 5 Mr. Miller, a couple years later, corroborated what
09:13AM 6 Mr. Akau said. Basically a couple of months after Mr. Akau,
09:13AM 7 Mr. Kauhi also corroborated what Mr. Akau said. And that's
09:13AM 8 particularly important because Baird specifically stated that
09:13AM 9 if the codefendant's statements come directly from Mr. Akau,
09:13AM 10 it's a direct result. And this is exactly what happened.
09:13AM 11 Because he was honest, they were able to then convince
09:13AM 12 Mr. Kauhi and Mr. Miller to be honest about that. And it
09:13AM 13 doesn't matter if they testified at trial. The genesis for
09:13AM 14 their honesty was Mr. Akau's honesty. And 1B1.8 protects that.

09:14AM 15 Baird specifically states that the government cannot
09:14AM 16 end around 1B1.8 by simply going to a codefendant and saying,
09:14AM 17 hey, is that true? Because that's exactly what happened here.
09:14AM 18 And they can't end around it.

09:14AM 19 So when we are talking about derivative use, the Third
09:14AM 20 Circuit says, well, if you can have completely wholly
09:14AM 21 independent derivative evidence then you can use it. But here
09:14AM 22 there is no completely independent, wholly separate from
09:14AM 23 Mr. Akau evidence. There is only Mr. Miller and Mr. Kauhi who
09:14AM 24 both came clean only because Mr. Akau came clean.

09:14AM 25 THE COURT: Okay.

09:14AM 1 Mr. Nammar, anything else?

09:14AM 2 MR. NAMMAR: I think the grand jury transcript is

09:14AM 3 clear. Wayne Miller that we cited, Wayne Miller says before

09:14AM 4 the grand jury that Miske wanted to home run him. And the

09:14AM 5 reason why was to put people at the port so they could place

09:14AM 6 anybody in these high lucrative jobs at the ports. So I think

09:15AM 7 the record is clear both before and after, Your Honor.

09:15AM 8 THE COURT: So what the defendant bargained for, in my

09:15AM 9 view, was not the exclusion of the Calles incident from the

09:15AM 10 determination of the guideline levels. Had that been the deal,

09:15AM 11 there certainly could have been expressed language used in his

09:15AM 12 plea agreement to accomplish that goal and there isn't.

09:15AM 13 What the defendant bargained for, as indicated in some

09:15AM 14 of the very correspondence that he relies on, in particular

09:15AM 15 paragraph 21(e) of the plea agreement and its related provision

09:15AM 16 1B1.8 of the guidelines is this: Together they prohibit the

09:15AM 17 government's use of self-incriminating statements for purposes

09:15AM 18 of guideline calculations but with enumerated exceptions.

09:15AM 19 Those exceptions include the use of information known to the

09:15AM 20 government prior to the defendant's proffer or based on

09:15AM 21 information provided by others. The defendant's proffer coming

09:16AM 22 on March -- in March of 2021.

09:16AM 23 And here, while the defendant, Mr. Akau, no doubt

09:16AM 24 provided such self-incriminating statements regarding his role

09:16AM 25 in the Calles murder for hire, it is also true that the

09:16AM 1 government, despite the defendant's claims to the contrary,
09:16AM 2 knew of Calles, the GPS tracking of Calles, and the Miske
09:16AM 3 Enterprise's desire to cause physical harm to Calles all prior
09:16AM 4 to the defendant's proffer. That information principally
09:16AM 5 coming from both Wayne Miller and Jacob Smith, both of whom
09:16AM 6 testified, as Mr. Nammar mentioned, before the grand jury as
09:16AM 7 well at length during Mr. Miske's 2024 trial.

09:16AM 8 That information, in other words, was known to the
09:16AM 9 government beginning at least two and a half years before the
09:16AM 10 defendant's first proffer. In other words, by October of 2018.
09:17AM 11 The government provides support for that at Exhibits B through
09:17AM 12 E of its supplemental sentencing statement.

09:17AM 13 As the investigation of the Miske Enterprise
09:17AM 14 continued, it is certain and clear that the additional details
09:17AM 15 emerged. And one of those was the defendant's role as the
09:17AM 16 trigger man in that effort. That defendant provided that
09:17AM 17 information, is certain also to be sure, but it also came from
09:17AM 18 Mr. Kauhi as well as Mr. Miller. Whether these pieces of the
09:17AM 19 puzzle seems to me were derived from a source independent of
09:17AM 20 Mr. Akau, as was the enterprise's initial targeting of
09:17AM 21 Mr. Calles, is not significant because of the defendant's
09:17AM 22 derivative use clause, something which the defendant himself
09:18AM 23 did not provide to the Court as part of his sentencing
09:18AM 24 statement.

09:18AM 25 There is no mistaking the permissive use of those

09:18AM 1 additional investigation details, for purposes of sentencing,
09:18AM 2 when one considers that clause, and whether that's true whether
09:18AM 3 or not the details came from this defendant or from cooperating
09:18AM 4 sources.

09:18AM 5 Also, in my review of the record I did not see any
09:18AM 6 evidence nor am I aware of anyone contending to the following,
09:18AM 7 which is that the derivative use clause was rescinded or
09:18AM 8 revoked. That is certainly not true. It remains as much in
09:18AM 9 play and in effect and not superseded by the defendant's plea
09:18AM 10 agreement today as it was when it was originally signed.

09:18AM 11 In fact, as Mr. Nammar mentioned in his remarks this
09:18AM 12 morning, as well as in the government's supplemental sentencing
09:18AM 13 statement, a portion of the plea agreement that paragraph 24
09:18AM 14 affirms, the continued viability of the defendant's proffer
09:19AM 15 agreement which includes the derivative use clause. I see,
09:19AM 16 therefore, no prohibition to using the information related to
09:19AM 17 the Calles murder for hire in the determination of the
09:19AM 18 defendant's guideline calculations, and that objection is
09:19AM 19 therefore overruled.

09:19AM 20 The defendant also asserts entitlement, and this is
09:19AM 21 his second objection, to a minor role adjustment under 3B1.2 of
09:19AM 22 the guidelines. I'm not certain which of the racketeering acts
09:19AM 23 that this minor role adjustment claim is being made. I assume
09:19AM 24 it's in relation to the same murder for hire of Mr. Calles, but
09:19AM 25 if that is not correct then please clarify that in your

09:19AM 1 remarks.

09:19AM 2 Does anyone wish to be heard further with respect to

09:19AM 3 this minor role adjustment?

09:19AM 4 MR. NAMMAR: Nothing further from the government.

09:19AM 5 THE COURT: Mr. Flores, anything else?

09:19AM 6 MR. FLORES: Yes, Your Honor. Just by clarification

09:19AM 7 to the Court's comment. Your Honor, my argument is that

09:20AM 8 Mr. Akau had a minor role in the overall conspiracy.

09:20AM 9 Now, was he involved in underlying racketeering acts?

09:20AM 10 Yes, he's admitted that, he's accepted that in the plea, and he

09:20AM 11 is before the Court because of those acts. However, this Court

09:20AM 12 has the full breadth of this conspiracy. We know everyone from

09:20AM 13 the top all the way to the bottom.

09:20AM 14 And Mr. Akau, when he first got involved, even as

09:20AM 15 expressed in his plea agreement, was not necessarily a hundred

09:20AM 16 percent aware of the breadth of this conspiracy. As a matter

09:20AM 17 of fact, it wasn't even an enterprise and that obviously it was

09:20AM 18 a racketeering enterprise. He had very if almost no contact

09:20AM 19 with the actual principle person in this -- Mr. Miske, who was

09:20AM 20 the principle actor in this enterprise.

09:20AM 21 There was numerous individuals that he didn't --

09:20AM 22 weren't even aware that were part of it. These acts that he

09:20AM 23 has agreed that he has committed on behalf of the enterprise

09:20AM 24 again were much less than a lot of other principle players.

09:21AM 25 Jacob Smith, Mr. Miller, Harry Kauhi were involved in numerous

09:21AM 1 offenses in this enterprise. Mr. Akau was involved in two.

09:21AM 2 Although they were serious --

09:21AM 3 THE COURT: If you are asking me to consider a minor

09:21AM 4 role adjustment as it relates to the entire enterprise, that

09:21AM 5 seems to me to be a much more difficult argument for you to

09:21AM 6 sustain, because even though you may be correct that he is

09:21AM 7 substantially less culpable than the few individuals that you

09:21AM 8 just mentioned, there are at least a dozen individuals who are

09:21AM 9 far less culpable than this defendant, Ashlin Akau, Trisha

09:21AM 10 Castro, Delia Fabro-Miske, Dae Han Moon, Jason Yokoyama,

09:21AM 11 Preston Kimoto. Do you want me to go on and on?

09:21AM 12 There is no way he is going to qualify if you want me

09:21AM 13 to consider it in the scope of the entire enterprise or in the

09:21AM 14 scope of the entire Count 1 racketeering conspiracy.

09:21AM 15 MR. FLORES: I understand that, Your Honor. Again,

09:21AM 16 all those individuals of course just named, Mr. Akau is not

09:22AM 17 above those individuals as far as culpability. And when we're

09:22AM 18 were talking about the individual crime --

09:22AM 19 THE COURT: Oh, absolutely he is.

09:22AM 20 MR. FLORES: We are talking about the individual

09:22AM 21 crimes that Mr. Akau committed. Mr. Miller was controlling him

09:22AM 22 a hundred percent. He was the last-second participant in the

09:22AM 23 Carignan robbery. He wasn't even --

09:22AM 24 THE COURT: What does that matter?

09:22AM 25 MR. FLORES: Well, because although the government

09:22AM 1 tries to argue that he planned it and things like that, that
09:22AM 2 was Ms. Akau. Ashlin Akau set that up. She had initially
09:22AM 3 robbed Mr. Carignan of one pound of meth and decided to go
09:22AM 4 further than that and brought in other individuals into that
09:22AM 5 scheme, Jacob Smith, Harry Kauhi, Mr. Akau, and I believe some
09:22AM 6 other individuals.

09:22AM 7 So, Your Honor, when you are looking at not only the
09:22AM 8 breadth of the conspiracy but also the individual crimes that
09:22AM 9 Mr. Akau was involved in, Your Honor, his role is definitely
09:22AM 10 lower than a lot of other individuals.

09:22AM 11 THE COURT: Okay. Well, you persist in making an
09:23AM 12 argument to me that is far more difficult for you to sustain
09:23AM 13 than what I had thought you were making. So when I consider
09:23AM 14 his conduct, and Mr. Nammar I don't need to hear anything from
09:23AM 15 the government on this, because this seems to be a very
09:23AM 16 extremely easy objection to resolve and overrule. There is no
09:23AM 17 possible way, in considering all of the actors, and I'm just
09:23AM 18 only talking about those who were charged, not those who were
09:23AM 19 uncharged, but when you consider all of the actors who were
09:23AM 20 charged in relation to Mr. Miske's enterprise, most of whom
09:23AM 21 pled guilty to Count 1, but some who didn't, some who pled
09:23AM 22 guilty to other offenses, there is no possible way that you
09:23AM 23 could find under 3B1.2 of the guidelines that Mr. Akau is
09:23AM 24 substantially less culpable than the average participant. I
09:23AM 25 think I mentioned half a dozen of them already just in my

09:23AM 1 preliminary remarks, and there are at least another four, five,
09:23AM 2 six individuals.

09:23AM 3 So while you could certainly debate whether or not he
09:23AM 4 is substantially less culpable than persons like Jacob Smith
09:24AM 5 and Harry Kauhi, there is no possible way that anyone on the
09:24AM 6 record of the trial that we have could come to the conclusion,
09:24AM 7 at least reasonably so, that he is less culpable, much less
09:24AM 8 substantially less culpable, than all of the individuals that I
09:24AM 9 mentioned and probably a bunch that I didn't, including Mike
09:24AM 10 Buntenbah, Jonah Ortiz, Hunter Wilson, Jarrin Young, Tim
09:24AM 11 Taboada and probably Nick Carignan as well. So there is no way
09:24AM 12 that that objection can be sustained. It is in fact overruled.

09:24AM 13 The defendant asserts a third objection. He contends
09:24AM 14 that the PSR uses the wrong guideline 2E1.1 and therefore
09:25AM 15 applies the wrong base offense level for a racketeering
09:25AM 16 conspiracy, such as the Title 18, Section 1962 offense to which
09:25AM 17 the defendant pled. According to Mr. Akau, the proper
09:25AM 18 guideline is 2X1.1, not 2E1.1.

09:25AM 19 Does anyone wish to be heard with respect to that
09:25AM 20 objection?

09:25AM 21 MR. NAMMAR: Yes, Your Honor. One of the guiding
09:25AM 22 principles of the guidelines is you always start with the
09:25AM 23 appendix. And the appendix tells us here that the applicable
09:25AM 24 guideline for a racketeering conspiracy is 2E1.1. And 2E1.1
09:25AM 25 states that you use the offense level applicable to the

09:25AM 1 underlying crime or 19, whichever is greater. Here the
09:25AM 2 underlying crime is greater. So probation was correct in using
09:25AM 3 2E1.4.

09:25AM 4 The defense cites no cases, and there is simply no
09:25AM 5 instruction the guidelines use 2X1.1. I took a quick look at
09:26AM 6 Ninth Circuit cases and I found United States versus Scott, 642
09:26AM 7 F.3d 791 at page 801 Ninth Circuit 2011 supports probation
09:26AM 8 analysis and they quote that Section 2E1.1 covers racketeering
09:26AM 9 conspiracies.

09:26AM 10 THE COURT: Mr. Flores, anything else with regard to
09:26AM 11 this objection?

09:26AM 12 MR. FLORES: No, Your Honor. Not on this one.

09:26AM 13 THE COURT: I don't know if there could be an
09:26AM 14 objection that is even simpler than the last one to resolve,
09:26AM 15 but this one might be that. It is also overruled. Sentencing
09:26AM 16 guidelines Appendix A is the starting point. To me it's the
09:26AM 17 end point here. 2E1.1 is the correct guideline for the reasons
09:26AM 18 stated in the PSR as well as by Mr. Nammar. It provides the
09:26AM 19 correct base offense level and no adjustment needs to be made.

09:26AM 20 The defendant asserts a fourth and final objection, at
09:27AM 21 least final according to my reading of the papers. He asserts
09:27AM 22 that the PSR gets his criminal history score wrong by adding an
09:27AM 23 additional extra point under 4A1.1(d) of the guidelines to the
09:27AM 24 convictions for robbery, assault, and weapons possession
09:27AM 25 described at paragraph 64 of the PSR.

09:27AM 1 Does anyone wish to be heard with respect to this
09:27AM 2 particular objection?
09:27AM 3 MR. NAMMAR: Yes, Your Honor. Probation gets it spot
09:27AM 4 on, Your Honor, when they cite to the Gonzalez case from the
09:27AM 5 Ninth Circuit. That case instructs that you follow the clear
09:27AM 6 and straightforward instructions in the guidelines. And there
09:27AM 7 is nothing in the particular guideline in question that
09:27AM 8 mentions offenses have to be committed on separate occasions.
09:27AM 9 And then probation cites the Scott case from the Fifth
09:27AM 10 Circuit, and it's directly on point. And it supports the
09:27AM 11 position that the point should be added here when you are
09:27AM 12 dealing with one criminal single episode but multiple crimes.
09:28AM 13 The Scott case even discusses the actual commentary note that
09:28AM 14 the defense brings up to suggest that the Court should rule in
09:28AM 15 its favor and rejects the defense argument.
09:28AM 16 I found one other case from the Seventh Circuit, it's
09:28AM 17 unpublished, United States versus Talbert 558 Fed. Appendix
09:28AM 18 701, that goes along with the Fifth Circuit case in Scott. I
09:28AM 19 was not able to find a Ninth Circuit case.
09:28AM 20 THE COURT: Mr. Flores, your thoughts. Anything
09:28AM 21 additional?
09:28AM 22 MR. FLORES: Your Honor, just again, because there is
09:28AM 23 really no guidance in the Ninth Circuit on this particular
09:28AM 24 point, I made this objection because again the -- just the
09:28AM 25 plain reading of it makes it seem as if it's two separate

09:28AM 1 robberies -- or two separate -- in this case robberies
09:28AM 2 because -- and they are consolidated under a plea and for
09:28AM 3 sentencing, and it makes sense that it would count as an extra
09:28AM 4 point.

09:28AM 5 Here, Mr. Akau was convicted of two violent crimes
09:29AM 6 based on the same set of facts. And because of that I made
09:29AM 7 this objection, Your Honor, because it's not clear by these
09:29AM 8 guidelines whether it's trying to add one point for two
09:29AM 9 separate crimes or if it's adding one point for a particular
09:29AM 10 crime charged two ways. And the only case that I could find,
09:29AM 11 which was a Fifth Circuit case, Montgomery, the facts of that
09:29AM 12 case that there was two individual crimes committed, and they
09:29AM 13 were consolidated under a plea and he was sentenced at the same
09:29AM 14 time for those two separate crimes and then it was -- the one
09:29AM 15 point was added.

09:29AM 16 Again, because of that, Your Honor, I made the
09:29AM 17 objection because I believe that the intent of the guidelines
09:29AM 18 were to deal with that set of facts, which was two separate
09:29AM 19 violent crimes committed on separate occasions and then
09:29AM 20 combined under one plea. And so I made the objection, Your
09:29AM 21 Honor.

09:29AM 22 THE COURT: And that is the example in fact I think
09:30AM 23 that the commentary provides.

09:30AM 24 MR. FLORES: That's correct, Your Honor. And again
09:30AM 25 with that example is the reason that I believe that that's what

09:30AM 1 it was meant to apply to.

09:30AM 2 Any further questions, Your Honor?

09:30AM 3 THE COURT: No, I don't have any further questions,

09:30AM 4 thank you. The objection nonetheless is overruled. This does

09:30AM 5 seem straightforward as well. There are two separate crimes of

09:30AM 6 violence encompassed within the paragraph 64 convictions for

09:30AM 7 which the defendant received three criminal history points,

09:30AM 8 those two crimes of violence being robbery and assault. It

09:30AM 9 seems to me to be a straightforward application of 4A1.1(d) to

09:30AM 10 apply the one additional criminal history point as the PSR

09:30AM 11 does. There is no requirement that the separate crimes occur

09:30AM 12 on different dates then combined into a single indictment as

09:30AM 13 the defense suggests. So that objection is likewise overruled.

09:31AM 14 I'm not aware of any other objections from either side

09:31AM 15 beyond the four that I've just addressed. If I missed

09:31AM 16 something from either side's papers, please let me know.

09:31AM 17 MR. NAMMAR: Not from the government.

09:31AM 18 MR. FLORES: No, Your Honor, not from the defense.

09:31AM 19 THE COURT: All right. Having read then the revised

09:31AM 20 PSR and there being no other objections to the factual

09:31AM 21 statements therein from either side with the potential to

09:31AM 22 affect the guideline calculations, the Court adopts those

09:31AM 23 statements as its own findings. I also accept Mr. Akau's plea

09:31AM 24 agreement. I am satisfied having read it in the context of the

09:31AM 25 revised PSR that the agreement adequately reflects the

09:31AM 1 seriousness of his offense and accepting it will not undermine
09:31AM 2 the statutory purposes of sentencing.

09:31AM 3 Mr. Nammar, I gather the government is moving for the
09:31AM 4 one-level adjustment under 3E1.1(b) of the guidelines; is that
09:31AM 5 correct?

09:31AM 6 MR. NAMMAR: Yes, Your Honor.

09:31AM 7 THE COURT: For good cause appearing, that request is
09:31AM 8 granted. For purposes of sentencing then that leaves us with
09:31AM 9 the following: A total offense level 34; the defendant's
09:32AM 10 criminal history category is three, that places him in zone D
09:32AM 11 as in delta of the sentencing guideline matrix.

09:32AM 12 The applicable guidelines then to that offense level
09:32AM 13 and criminal history category are as follows: An imprisonment
09:32AM 14 term of between 188 and 235 months, a supervised release term
09:32AM 15 of between one and three years, a fine range of between 35,000
09:32AM 16 and \$250,000. There is also a \$100 mandatory special
09:32AM 17 assessment that's required by statute, and this is of course
09:32AM 18 before consideration of the government's sentencing motion.

09:32AM 19 Counsel concur with those guideline calculations?

09:32AM 20 MR. NAMMAR: Yes, Your Honor.

09:32AM 21 MR. FLORES: Yes, Your Honor.

09:32AM 22 THE COURT: Mr. Nammar, is there anything that we need
09:32AM 23 to do with respect to forfeiture as it relates to Mr. Akau?

09:32AM 24 MR. NAMMAR: No, Your Honor.

09:32AM 25 THE COURT: All right. Then I'll hear from the

09:32AM 1 government please with regard to a recommendation.

09:32AM 2 MR. NAMMAR: Thank you, Your Honor. I want to start

09:32AM 3 with the 5K motion. Your Honor, having sat through the entire

09:33AM 4 trial, I think you are in a great position to decide whether

09:33AM 5 our 5K is sufficient or not. Of course, the starting point for

09:33AM 6 a 5K is the guideline itself. And one of the provisions of the

09:33AM 7 guideline that the Court should take into consideration is the

09:33AM 8 government's view.

09:33AM 9 From our view, number one, while we filed the motion,

09:33AM 10 we didn't believe that Mr. Akau's assistance was helpful beyond

09:33AM 11 getting others to plead. In other words, he came in early and

09:33AM 12 he pled guilty.

09:33AM 13 Number two, we didn't think he was reliable, and parts

09:33AM 14 of his testimony not credible for the reasons we pointed out,

09:33AM 15 specifically, the contradictions from the sworn statements to

09:33AM 16 Your Honor in the plea hearing and the changes that he made to

09:33AM 17 his trial testimony many of which favored the defense.

09:33AM 18 Number three, we would point out that Mr. Akau gave

09:34AM 19 Stancil privileged communications with his counsel after he had

09:34AM 20 entered a cooperation provision with the government. How do we

09:34AM 21 know that? We know that because the subject of the email is

09:34AM 22 about the plea hearing that Mr. Akau was about to enter into,

09:34AM 23 and the plea agreement he was going to enter into.

09:34AM 24 And what is Mr. Akau saying in those communications?

09:34AM 25 Is he saying, I'm not sure whether Stancil was there? No, he

09:34AM 1 is not saying that. He is saying emphatically Stancil was not
09:34AM 2 at the Carignan robbery. He is saying that even though
09:34AM 3 Stancil, even if he had a mask on, would be easy to pick out
09:34AM 4 with his huge head and huge built, and he is saying that even
09:34AM 5 though Mr. Akau himself testified at trial that after the
09:34AM 6 Carignan robbery they all went to the Waimanalo gym to break up
09:34AM 7 the methamphetamine and Mr. Stancil was there.

09:34AM 8 So his version of the incident just doesn't make
09:34AM 9 sense. And we think Mr. Akau is, for whatever reason, trying
09:35AM 10 to play both sides. In the end though, Your Honor has the
09:35AM 11 discretion. If Your Honor doesn't think our motion was
09:35AM 12 sufficient, Your Honor knows you can depart further.

09:35AM 13 As for the offense, we are asking for 168 months.
09:35AM 14 Over a four-year period Mr. Akau was an integral member in the
09:35AM 15 Miske Enterprise. During that time he showed no moral compass
09:35AM 16 whatsoever. He impersonated a police officer, he carried
09:35AM 17 multiple firearms, even though he was a felon, one of which had
09:35AM 18 a silencer. He almost murdered a high-ranking union member,
09:35AM 19 and he participated in an armed robbery with others of a drug
09:35AM 20 dealer of methamphetamine, even though he had 20 years earlier
09:35AM 21 participated in a violent robbery that had gone incredibly
09:35AM 22 wrong. But for intervention by Miller, he would have killed
09:35AM 23 Elgin Calles. In fact, all the evidence showed that Akau was
09:36AM 24 ready and willing to go through with the murder. The offense
09:36AM 25 conduct is violent and it's concerning.

09:36AM 1 Turning to the person that Your Honor is sentencing.
09:36AM 2 There are some mitigating factors. He has family support, he
09:36AM 3 has a track record of being gainfully employed. But in
09:36AM 4 aggravation, the Court is confronted with someone who had a
09:36AM 5 crack cocaine addiction, someone who shot off the ear of a cab
09:36AM 6 driver when he was 21, and who when he was in his 40s still had
09:36AM 7 not learned the lesson because he kept committing crimes in
09:36AM 8 this case, someone who in this case admitted he committed the
09:36AM 9 violent crimes because he needed money. And that motivation
09:36AM 10 should be concerning for the Court, especially given the fact
09:36AM 11 that he may lose his high-paying union job because of his
09:36AM 12 conviction in this case.

09:36AM 13 The bottom line is, given his history and his criminal
09:36AM 14 conduct in this case, there is a real risk that he will
09:36AM 15 reoffend, and he is without question someone the Court needs to
09:37AM 16 protect the public from.

09:37AM 17 As far as similarly situated, we don't believe that
09:37AM 18 Mr. Akau is similarly situated to anyone. As far as
09:37AM 19 defendants, he's probably the closest to Harry Kauhi who was
09:37AM 20 also in criminal history category 3. But when you look at
09:37AM 21 Mr. Kauhi's criminal record and you look at Mr. Akau's criminal
09:37AM 22 record, we think that they're different and Mr. Akau's is worse
09:37AM 23 because of the shooting that I've mentioned.

09:37AM 24 We also, from the government's perspective, we view
09:37AM 25 his cooperation different. As Your Honor may recall, Mr. Kauhi

09:37AM 1 received an extensive 5K, and that's not what the government is
09:37AM 2 recommending for Mr. Akau. And when we look at their roles in
09:37AM 3 the offense, we see them as different. In the Calles murder,
09:37AM 4 Akau was going to be the trigger man, as the Court has always
09:37AM 5 mentioned; Kauhi was not. And in the robbery of Nico Carignan,
09:37AM 6 Mr. Akau was the person who actually set that robbery in motion
09:38AM 7 by posing as police and blocking the road.

09:38AM 8 Your Honor may recall that Ashlin Akau actually
09:38AM 9 testified that it was Mr. Norman Akau who recruited her to
09:38AM 10 participate in the offense. And so for all those reasons, we
09:38AM 11 don't see Mr. Akau as similar to any other defendants in this
09:38AM 12 case.

09:38AM 13 In the end, given all of the 3553(a) factors,
09:38AM 14 including the need to send a message to others that these types
09:38AM 15 of crimes will not be tolerated and given how dangerous
09:38AM 16 Mr. Akau is, we think that a 168-month sentence is sufficient
09:38AM 17 but not greater than necessary.

09:38AM 18 THE COURT: Thank you.

09:38AM 19 Mr. Flores, your thoughts.

09:38AM 20 MR. FLORES: Your Honor, just in the government's 5K1
09:38AM 21 motion, I think I made it really clear what our position is and
09:38AM 22 my response to that. The government's attitude towards Norman
09:38AM 23 really changed when John Stancil filed that -- those privileged
09:39AM 24 communications. Obviously, no attorney wants their
09:39AM 25 communications with their client to be exposed and put on the

09:39AM 1 record as it was; but in the end, that was the catalyst so that
09:39AM 2 the government is now basically want to bury Mr. Akau.

09:39AM 3 Again, our position is that they conveyed to him on
09:39AM 4 numerous times that the murder for hire was not going to be
09:39AM 5 used for the guideline purposes. Now that's obviously not
09:39AM 6 going to happen. He is looking at a level 37, he is looking at
09:39AM 7 168 months. Then they submit this motion, this 5K1 motion, and
09:39AM 8 they give him a nominal one-level credit for exposing himself,
09:39AM 9 his family to some very dangerous individuals for helping the
09:39AM 10 government turn other codefendants on to their side for him
09:40AM 11 putting himself on the stand and testifying against a very
09:40AM 12 dangerous individual and a very dangerous group of individuals.

09:40AM 13 And that's not just talking about this particular
09:40AM 14 group of individuals. We are talking from now on any further
09:40AM 15 prison time and up -- even now at FDC he is now considered a
09:40AM 16 cooperating witness. And that's something that concerns him
09:40AM 17 greatly.

09:40AM 18 But here's the thing, Your Honor. The motion that the
09:40AM 19 government filed, in the way I looked at it, because again I
09:40AM 20 wasn't privy to being here in the courtroom while he testified,
09:40AM 21 I wasn't privy to being his attorney when the government
09:40AM 22 prepped his testimony, but the number one factor is that the
09:40AM 23 government is saying he was inconsistent with his plea
09:40AM 24 agreement. That is the number one factor that they have cited
09:40AM 25 for giving him a one-level credit for his cooperation, Your

09:40AM 1 Honor.

09:40AM 2 The government was a hundred percent aware that that's

09:40AM 3 exactly what he was worried about. Because in the trial

09:41AM 4 preparations, and Ms. Turk is again her declaration, she was

09:41AM 5 present, she was taking notes. It wasn't a paralegal, it

09:41AM 6 wasn't an investigator, it was Ms. Turk taking her own notes

09:41AM 7 about what was being said. She brought up the fact that some

09:41AM 8 of the statements he made during the plea colloquy were not

09:41AM 9 consistent with the truth.

09:41AM 10 And the government said, Don't worry about that.

09:41AM 11 There is going to be inconsistencies and just tell the truth.

09:41AM 12 They weren't surprised by Mr. Akau's testimony. He wasn't

09:41AM 13 unreliable. He told them exactly what he had told them all

09:41AM 14 along. And what their concern is is that that somehow aided

09:41AM 15 Mr. Miske, but that's not necessarily how I read the

09:41AM 16 transcript, how I understand the case.

09:41AM 17 What he did was help the government convict Mr. Miske.

09:41AM 18 And the most important factor that Mr. Akau brought to the

09:41AM 19 table was the fact that he testified that Wayne Miller, Wayne

09:42AM 20 Miller, Mr. Miske's best friend, approached him with an offer

09:42AM 21 to kidnap and potentially kill Mr. Frasure. This was probably

09:42AM 22 the number one most important crime that the government wanted

09:42AM 23 to make sure that Mr. Miske was convicted of. That alone

09:42AM 24 helped the government tremendously, because Mr. Miller, his

09:42AM 25 credibility was bolstered by that.

09:42AM 1 Mr. Miller even in the PSR, Your Honor, on page 23
09:42AM 2 paragraph 60, recognizes that Mr. Miller testified that he had
09:42AM 3 offered to Mr. Akau that particular hit. Mr. Akau said no,
09:42AM 4 because he's just a kid. But in the end that was tremendous
09:42AM 5 evidence, not only bolstering Mr. Miller's credibility but also
09:42AM 6 showing Mr. Miske's proclivity to wanting to kill people for
09:43AM 7 money -- or by offering money who have potentially wronged him.
09:43AM 8 And that's played out with the hit that Mr. Kauhi was involved
09:43AM 9 in, that plays out in the several -- I guess there was three
09:43AM 10 that Mr. Miller was involved in.

09:43AM 11 Again, all of this is very important because Mr. Akau
09:43AM 12 helped the government, didn't hinder them. And I think I've
09:43AM 13 spelled very well how they have taken bits and pieces of his
09:43AM 14 testimony and tried to turn that testimony to say, no, this was
09:43AM 15 actually helping the defense. But, in reality, the government
09:43AM 16 was a hundred percent aware of what this testimony was going to
09:43AM 17 be, because they prepared him for it and he also told them
09:43AM 18 through his attorney and himself said, look, the portions that
09:43AM 19 I said in my colloquy are not necessarily the truth, and they
09:43AM 20 just were like, okay, go ahead. Now they want to turn around
09:43AM 21 and use that against him.

09:43AM 22 THE COURT: Wait. The portions of the plea colloquy
09:43AM 23 were not the truth?

09:43AM 24 MR. FLORES: That's what he told them, Your Honor. If
09:44AM 25 you look at --

09:44AM 1 THE COURT: He lied to me because I was the one who
09:44AM 2 asked those questions at the plea colloquy; isn't that correct?
09:44AM 3 MR. FLORES: Right, Your Honor.
09:44AM 4 THE COURT: Right.
09:44AM 5 MR. FLORES: Right. But here's the thing --
09:44AM 6 THE COURT: So he lied to me in open court.
09:44AM 7 MR. FLORES: He did not lie to you, Your Honor.
09:44AM 8 THE COURT: You just said he did.
09:44AM 9 MR. FLORES: No. No. He didn't understand the
09:44AM 10 question because if you look at the testimony and it's in --
09:44AM 11 THE COURT: He didn't understand my question. So my
09:44AM 12 question was somehow confusing when I asked him whether Mr.
09:44AM 13 Miske was the one -- if he had an understanding that Mr. Miske
09:44AM 14 was the one who this \$50,000 offer came from that was somehow
09:44AM 15 confusing to him?
09:44AM 16 MR. FLORES: Right, Your Honor.
09:44AM 17 THE COURT: Right. It was confusing to Mr. Akau?
09:44AM 18 MR. FLORES: I would assume so, Your Honor. I wasn't
09:44AM 19 there.
09:44AM 20 THE COURT: That was an incredibly ambiguous and
09:44AM 21 unclear question, I guess, right?
09:44AM 22 MR. FLORES: No, I'm not saying that, Your Honor.
09:44AM 23 What I'm saying is his response -- and it's in Jessica Turk's
09:44AM 24 affidavit -- the answer was, That's what I understood, but I
09:44AM 25 don't know if that was the truth is what he said. That was his

09:44AM 1 response. And you got to understand, Your Honor, this was --
09:44AM 2 he's taking the plea while he is alone on video, his attorney
09:45AM 3 is not right next to him. I'm not sure how the procedure was
09:45AM 4 back then in this court, but it was COVID and he was in video
09:45AM 5 at FDC Honolulu, his attorney is in LA, and so it lent itself
09:45AM 6 to some confusion and some miscalculations.

09:45AM 7 But, in the end, the government is now saying, Look,
09:45AM 8 Judge, this is how -- he turned cold on us. But that's not
09:45AM 9 true because he tried to correct that days before. And the
09:45AM 10 government said, Don't worry about it. Not until John Stancil
09:45AM 11 filed those motions or that motion did it then turn around and
09:45AM 12 the government decided, you know what, we're going to use these
09:45AM 13 facts to justify a one-level reduction on a 5K1.1.

09:45AM 14 His testimony should have been just as helpful, if not
09:45AM 15 more helpful, than any other witness that is on par with what
09:45AM 16 he did, which would be Harry Kauhi, which would be Wayne
09:45AM 17 Miller. And he should get a like reduction for that for those
09:46AM 18 reasons, Your Honor.

09:46AM 19 I'm going to move on to why I believe the Court should
09:46AM 20 sentence him to much less than 168 months not only because of
09:46AM 21 the 5K1.1, his substantial assistance; but, as the government
09:46AM 22 noted, he does have some mitigating factors. And I think I'll
09:46AM 23 start with the biggest problem here, or at least one of the
09:46AM 24 elephants in the room, is his prior. But that prior occurred
09:46AM 25 30 years ago, Your Honor. Literally 30 years ago. And it was

09:46AM 1 a violent offense, he's paid his penance.

09:46AM 2 We assume that a long prison sentence is

09:46AM 3 rehabilitating and it was for a time. He got out, he got

09:46AM 4 married, he started a family. He didn't commit any further

09:46AM 5 crimes, he wasn't involved in anything criminal up until he

09:46AM 6 started having some economic pressures, he started having some

09:46AM 7 issues with his family, he started abusing drugs.

09:46AM 8 And as I put down in my memorandum, Your Honor, he had

09:46AM 9 the peers that helped him get into this mess. And that's

09:47AM 10 exactly what he did. He got himself into a huge mess because

09:47AM 11 he agreed to commit certain crimes for money which eventually

09:47AM 12 led him to where he is at now.

09:47AM 13 But he is 52 years old now, Your Honor, he has already

09:47AM 14 done five years. His health has deteriorated. Just this last

09:47AM 15 week, Your Honor, I just found out, when I came to see him a

09:47AM 16 couple of days ago, that he suffers from all these health

09:47AM 17 issues that I noted in my memorandum, but he also believes that

09:47AM 18 he might have cancer, Your Honor. He literally was just sent

09:47AM 19 to a doctor yesterday where they did some radioactive tests on

09:47AM 20 him, I have proof of those, Your Honor, if you want to look at

09:47AM 21 them; but in reality, he has some thyroid issues, they found

09:47AM 22 some lumps on those, and one of them was serious enough that

09:47AM 23 they injected him with some kind of nuclear medicine yesterday

09:47AM 24 to try to figure out what it is.

09:47AM 25 In the end, Your Honor, he is 52 years old, he has a

09:48AM 1 great family, he has great support, they are all here in the
09:48AM 2 court today, there's quite a bit of people here. The Court has
09:48AM 3 to fashion a sentence that I believe takes everything into
09:48AM 4 account including his cooperation, including his health,
09:48AM 5 including his family obligations, and including the fact that
09:48AM 6 before he was ever even arrested for this offense, Your Honor,
09:48AM 7 he was already rehabilitating himself. He had stopped using
09:48AM 8 drugs, he had stopped associating with all of the individuals
09:48AM 9 that the Court has named and that he was involved with. He
09:48AM 10 stopped associating with his bike club, he stopped associating
09:48AM 11 with anybody there, he stopped using drugs on his own. And
09:48AM 12 then he started a very successful business which he operated
09:48AM 13 for almost two years where he finally dug himself out of the
09:48AM 14 hole that he had created.

09:48AM 15 But, again, as I put down in my PSR or PSM, Your
09:48AM 16 Honor, his crimes came calling. Two years after -- a little
09:48AM 17 bit more than two years after he committed the last offense, he
09:49AM 18 gets arrested, Your Honor. And what does he do? He
09:49AM 19 immediately -- well, I wouldn't say immediately, but one of the
09:49AM 20 very first things that he did was he agreed to cooperate with
09:49AM 21 the government. And as the government said, that was a domino
09:49AM 22 effect, that allowed them to convince individuals like
09:49AM 23 Mr. Miller, Mr. Kauhi, and a bunch of other individuals who
09:49AM 24 cooperated against Mr. Miske to do so because they understood
09:49AM 25 that Mr. Akau, who was very involved in some of these offenses,

09:49AM 1 had done so. He had done so publicly.

09:49AM 2 There was a lot of -- I looked at the record,

09:49AM 3 initially his plea was sealed. It was sealed until his

09:49AM 4 attorney walked out the door and basically announced to the

09:49AM 5 world that Mr. Akau had cooperated. And then it was unsealed.

09:49AM 6 And so every one of those facts allowed the government to make

09:49AM 7 this case. And I don't think the Court should just push that

09:49AM 8 to the side. Five years is a long time for anyone, and

09:49AM 9 especially long for someone who is 52 years old, whose health

09:49AM 10 is deteriorating.

09:49AM 11 I want the Court to consider everything that I

09:49AM 12 submitted in my memorandum, in my response to the 5K1.1, and

09:50AM 13 sentence him to a five-year term, Your Honor.

09:50AM 14 THE COURT: Thank you.

09:50AM 15 Mr. Nammar, do you have anything else?

09:50AM 16 MR. NAMMAR: No, Your Honor.

09:50AM 17 THE COURT: Mr. Akau, you have the opportunity to what

09:50AM 18 we call allocute. It's a fancy term to say that you have an

09:50AM 19 opportunity to address the Court, the community, whomever you

09:50AM 20 choose, if you choose to do so, but you should also understand

09:50AM 21 that you are not under an obligation to say anything at all

09:50AM 22 during the course of your sentencing hearing. We merely

09:50AM 23 provide you the opportunity to do so.

09:50AM 24 So if you wish, now would be the time.

09:50AM 25 THE DEFENDANT: Here or here?

09:50AM 1 THE COURT: Wherever you feel comfortable. You may
09:50AM 2 speak right from counsel table and you also may stay seated if
09:50AM 3 you wish.

09:50AM 4 THE DEFENDANT: Thank you, Your Honor. I'm going to
09:50AM 5 read off of this, if you don't mind.

09:50AM 6 THE COURT: Of course, not a problem.

09:51AM 7 THE DEFENDANT: I would like to first start off by
09:51AM 8 saying to my family, to the victims, and to the community I am
09:51AM 9 truly sorry for all the hurt my actions have caused you. I
09:51AM 10 would also like to apologize to anyone unknown to me that has
09:51AM 11 been affected by my actions. To my wife and my daughters, I'm
09:51AM 12 sorry for letting you guys down and causing you guys so much
09:51AM 13 pain. I love you guys all very much, and I will do better for
09:51AM 14 you all. You guys are my life.

09:51AM 15 I accept full responsibility for my actions. In the
09:51AM 16 past, I demonstrated poor decision making which has brought me
09:51AM 17 here today. I'm extremely remorseful for my past actions and
09:51AM 18 behavior. Today, I take accountability for what I've done. I
09:51AM 19 have been incarcerated for almost five years now.

09:51AM 20 Your Honor, what I've learned, seen, and experienced
09:51AM 21 is that time is so very precious but it can also be so cruel.
09:52AM 22 And once it's gone, there is nothing you can do to get it back.
09:52AM 23 Family is everything to me, and I want to spend as much time as
09:52AM 24 I can with them. I love my wife and my two daughters, and I'm
09:52AM 25 very proud of them. I watched them overcome some of life's

09:52AM 1 problems that have come their way and that they have endured
09:52AM 2 five years of their life without me and having to navigate
09:52AM 3 alone without being there for them.
09:52AM 4 I'm also super appreciative for my wife. She has held
09:52AM 5 down my family and did an amazing job raising my kids on her
09:52AM 6 own while still coming to support and visit me as much as she
09:52AM 7 can.
09:52AM 8 I've completed a number of programs while at FDC
09:52AM 9 Honolulu. And the tools I've learned will help me to be a
09:52AM 10 better husband, father, and a better citizen to our community.
09:52AM 11 I know I'm ready to return to my family and to society.
09:53AM 12 Your Honor, I humbly ask you for leniency in my
09:53AM 13 sentencing today. Please give me a chance to be there for my
09:53AM 14 family. Thank you.
09:53AM 15 THE COURT: I appreciate your remarks. I'll turn to
09:53AM 16 both counsel.
09:53AM 17 Mr. Flores, anything else?
09:53AM 18 MR. FLORES: No, Your Honor.
09:53AM 19 MR. NAMMAR: No, Your Honor.
09:53AM 20 THE COURT: Mr. Nammar.
09:53AM 21 MR. NAMMAR: No, Your Honor.
09:53AM 22 THE COURT: The first order of business is the
09:53AM 23 government's 5K motion filed on the docket at 1871 on
09:53AM 24 March 14th of this year. That motion is granted. The Court
09:53AM 25 finds that there are mitigating circumstances of a kind or

09:53AM 1 degree that were not adequately taken into consideration by the
09:53AM 2 Sentencing Commission in formulating the guidelines, and that
09:53AM 3 these circumstances should result in a sentence different from
09:53AM 4 that suggested by the guidelines.

09:53AM 5 In its 5K motion, the government describes the
09:53AM 6 defendant's substantial assistance as, quote, very limited,
09:53AM 7 unquote. His early plea, more specifically, encouraged
09:54AM 8 coconspirators to likewise plead early and many did so. And
09:54AM 9 based on that, the government recommends a one-level departure.

09:54AM 10 The reason Mr. Akau's assistance, in the government's
09:54AM 11 estimation, wasn't more valuable on par with some of the other
09:54AM 12 codefendants that we have seen who testified at trial, is
09:54AM 13 because, in the government's estimation, Mr. Akau reneged on
09:54AM 14 his promise of cooperation. And that decision to renege was
09:54AM 15 never more evident than in Mr. Miske's trial where the
09:54AM 16 defendant essentially recanted Mr. Miske's personal involvement
09:54AM 17 in two murder-for-hire contracts related to Elgin Calles, who
09:54AM 18 we talked quite a lot about already this morning, as well as
09:54AM 19 Jonathan Fraser.

09:54AM 20 In both instances, Mr. Akau testified that Mr. Miske
09:55AM 21 had nothing to do with either and both had everything to do
09:55AM 22 with Mr. Miske's associates only, to include Wayne Miller, in
09:55AM 23 contrast to Mr. Akau's admissions to this Court during his
09:55AM 24 change of plea colloquy.

09:55AM 25 Speaking of which, that colloquy talked about Mr.

09:55AM 1 Akau's role with respect to Mr. Miske's associates and
09:55AM 2 Mr. Akau's decision to accept financial compensation for his
09:55AM 3 personal involvement in those two hits. My recollection is
09:55AM 4 during the change of plea colloquy, in addition to the facts
09:55AM 5 that were specifically admitted by Mr. Akau in paragraph eight
09:56AM 6 of his plea agreement, I specifically asked him whether the
09:56AM 7 monies that had been offered to him for both of those
09:56AM 8 contracts, to his understanding, came directly from Mr. Miske.

09:56AM 9 I specifically asked him those questions because I
09:56AM 10 knew of course that tying Mr. Miske specifically to these two
09:56AM 11 acts was important, of course, and even critical to his
09:56AM 12 upcoming trial testimony and eventually to today, what kind of
09:56AM 13 consideration he should receive for providing the cooperation
09:56AM 14 and assistance under 5K1 that the government was looking for.

09:56AM 15 I looked back at the plea colloquy transcript, and I
09:57AM 16 think my questioning, although I'm obviously biased, was
09:57AM 17 anything but unclear or ambiguous. And certainly Mr. Akau
09:57AM 18 expressed no reservation or hesitation in answering my
09:57AM 19 questions in the affirmative at that change of plea colloquy.
09:57AM 20 In other words, his understanding was that the \$50,000 that he
09:57AM 21 was being offered came not from Mr. Miller or any other Miske
09:57AM 22 associate but from Mr. Miske himself.

09:57AM 23 So it came certainly as a surprise, maybe even a
09:57AM 24 shock, when Mr. Akau took the stand in the government's case in
09:57AM 25 chief and said precisely the opposite. To me that was more

09:57AM 1 than a failure to cooperate with the government, it was an
09:58AM 2 attempt to undermine the government's prosecution. The fact
09:58AM 3 that that testimony that Mr. Miller made him the offer, these
09:58AM 4 \$50,000 contracts, amounted to almost nothing.

09:58AM 5 I mean, the defense says, well, it helped bolster the
09:58AM 6 reliability of Wayne Miller. I'm not sure that Mr. Akau's
09:58AM 7 testimony was being sought by the government in order to
09:58AM 8 increase the reliability of Wayne Miller. It might have had
09:58AM 9 that effect, but the key issue was tying Mr. Miske to these
09:58AM 10 crimes. That was a key issue throughout the seven-month trial
09:58AM 11 with respect to not only these events but virtually every other
09:58AM 12 event, because Mr. Miske did a fantastic job of divorcing
09:59AM 13 himself from personal involvement in relation to any number of
09:59AM 14 criminal acts. These two, the Calles and the Frasure murders,
09:59AM 15 are but two of them.

09:59AM 16 So that was the primary importance, the primary reason
09:59AM 17 no doubt that the government called Mr. Akau to provide the
09:59AM 18 links necessary to put these contracts in the hands of
09:59AM 19 Mr. Miske, not Mr. Miller, not anyone else. Mr. Akau took the
09:59AM 20 stand and shot the government in the foot.

09:59AM 21 So what does that mean? It means this: Given
10:00AM 22 Mr. Akau's efforts to affirmatively thwart the government's
10:00AM 23 prosecution of Mr. Miske, in Mr. Nammar's words, to play both
10:00AM 24 sides, the defendant should be thrilled to get anything of
10:00AM 25 value for what he did. The Court reluctantly awards the

10:00AM 1 defendant the one-level sought and recommended by the
10:00AM 2 government. That one level results in a total offense level of
10:00AM 3 33, criminal history category remains at three; that would
10:00AM 4 result and does result in a restated guideline range of 168 to
10:00AM 5 210 months. That is of course not where we end up.

10:00AM 6 Section 3553(a) of Title 18 of the United States Code
10:00AM 7 requires the Court to consider many other factors beyond the
10:01AM 8 extent and value of the defendant's cooperation. 3553(a)
10:01AM 9 commands the Court to consider the individual, Mr. Akau, that
10:01AM 10 stands before the Court, and this is why the Court has heard
10:01AM 11 about issues such as pre-arrest rehabilitation, such as the
10:01AM 12 programming that the defendant has completed while at FDC.
10:01AM 13 This is why the Court considers the support network that the
10:01AM 14 defendant has, as demonstrated in part not only by the
10:01AM 15 attendance today at the defendant's sentencing but by the
10:01AM 16 character letters that have been submitted on the defendant's
10:01AM 17 behalf, all of which the Court has read and considered.

10:01AM 18 3553(a) also requires the Court to consider other
10:02AM 19 factors, the nature and circumstances of the offense, the
10:02AM 20 events -- the racketeering acts that the defendant has been
10:02AM 21 involved in. The other 3553(a) factors that seems most
10:02AM 22 significant in Mr. Akau's case is the need to avoid unwarranted
10:02AM 23 disparities with those who have been found guilty of similar
10:02AM 24 crimes and have similar backgrounds.

10:02AM 25 I've attempted to consider these and all of the

10:02AM 1 3553(a) factors mindful of my obligation to impose a sentence
10:02AM 2 that is sufficient but not greater than necessary to achieve
10:02AM 3 the many varied and sometimes conflicting goals of Section
10:02AM 4 3553(a) (2) of Title 18. Those goals include the need to punish
10:02AM 5 and to deter, but they also acknowledge and I acknowledge the
10:02AM 6 need to allow for the defendant's rehabilitation.

10:03AM 7 In aggravation, I think we have maybe gone as far as
10:03AM 8 we need to go as far as the nature and role in the various
10:03AM 9 offenses, principally the three racketeering acts that the PSR
10:03AM 10 focuses on, the Nico Carignan drug stash robbery in which the
10:03AM 11 defendant and others stole roughly five pounds of
10:03AM 12 methamphetamine from Mr. Carignan and then sold it for profit.
10:03AM 13 The defendant's role in that particular offense was, as
10:03AM 14 Mr. Nammar described in his remarks, impersonating a law
10:03AM 15 enforcement officer and brandishing a weapon to, I'll use the
10:03AM 16 word, encourage Mr. Carignan to stop his vehicle. The
10:03AM 17 defendant got out of that vehicle and was, to my recollection
10:04AM 18 of the testimony, the principle person who affirmatively acted
10:04AM 19 to steal Mr. Carignan's stash.

10:04AM 20 The Elgin Calles murder for hire that we heard much
10:04AM 21 about, the GPS tracking of Mr. Calles that the defendant and
10:04AM 22 others engaged in, the uncontroverted testimony that this
10:04AM 23 defendant was the trigger man and, but for Wayne Miller's last
10:04AM 24 minute, last second almost decision and phone call to call off
10:04AM 25 that hit, the defendant was the person outside of Penny's Diner

10:04AM 1 on Sand Island Access Road who would have carried out and was
10:04AM 2 prepared to carry out the actual murder of that union official
10:04AM 3 because he stood in the way of Mr. Miske's continued placement
10:04AM 4 of whomever he wished at the docks.

10:05AM 5 And, third, the murder for hire of Jonathan Fraser.

10:05AM 6 Something that I know the defendant didn't act upon beyond
10:05AM 7 accepting the contract itself. I don't recall much, if
10:05AM 8 anything, in terms of him acting to further that murder that
10:05AM 9 was conducted by Mr. Miske and, as far as we know, others.

10:05AM 10 The defendant's criminal history, again we heard much
10:05AM 11 about, I don't disagree with Mr. Flores's comment that that
10:05AM 12 crime, while violent, is also dated and from which the
10:05AM 13 defendant rehabilitated and paid the price. I think all of
10:05AM 14 that, is fair to say, stemming from a 1994, 31 years ago,
10:06AM 15 failed robbery of a taxi driver in the Kahala area which
10:06AM 16 resulted in that taxi driver having his ear shot off or
10:06AM 17 mutilated.

10:06AM 18 The defendant's history also includes substance abuse
10:06AM 19 addictions, which we have heard some about as well, principally
10:06AM 20 involving cocaine and crack cocaine.

10:06AM 21 In mitigation, I mentioned a few minutes ago that I'm
10:06AM 22 familiar with, having read and considered the number of letters
10:06AM 23 including from the defendant's spouse and daughters, father and
10:06AM 24 father-in-law and from the defendant himself that were attached
10:06AM 25 to the sentencing memorandum at docket 1898.

10:06AM 1 The defendant does have the evident support of his
10:06AM 2 immediate family. I know his father is a regular visitor to
10:06AM 3 FDC and is certainly in the defendant's camp, although maybe
10:07AM 4 that wasn't always and hasn't always been the case. The
10:07AM 5 defendant's education includes his graduation from Castle in
10:07AM 6 1991, and his regular employment as a grip in the movies and as
10:07AM 7 the owner of a small business, an air conditioning company in
10:07AM 8 particular for several years. I believe that air conditioning
10:07AM 9 company was focused on providing those types of services to the
10:07AM 10 movies as well. So it was outgrowth it appears from his work
10:07AM 11 as a grip in the movies.

10:07AM 12 Mr. Flores has asked me to consider other factors.
10:07AM 13 The other one that I will note -- there are two factors that I
10:07AM 14 will note beyond those already mentioned include the
10:07AM 15 defendant's medical issues. I'm aware of them, I don't feel
10:07AM 16 like it's necessarily an appropriate thing to do to detail or
10:08AM 17 chronicle them on the record here, but I'm aware of those
10:08AM 18 medical issues that have been presented to me.

10:08AM 19 I'm also aware of the environment in which the
10:08AM 20 defendant was raised, what I'll refer to as a challenging
10:08AM 21 household. Again, I mention it because I want Mr. Akau to be
10:08AM 22 aware of the fact that I'm aware and have considered those
10:08AM 23 factors as well. Similar to medical issues, I don't feel like
10:08AM 24 it is something that is appropriate for me to get into much
10:08AM 25 detail about on the record here for essentially for privacy

10:08AM 1 reasons, but I do want Mr. Akau and the defense to know that I
10:08AM 2 have factored those issues in.

10:08AM 3 So where does this then result? As I mentioned, the
10:09AM 4 guidelines the restated guideline provision has a low end of
10:09AM 5 168 months. The guideline range is but one of the many 3553(a)
10:09AM 6 factors that the Court must consider. The government is urging
10:09AM 7 the Court to impose a sentence at that low end of the restated
10:09AM 8 range, 168 months. The defense has proposed a 60-month
10:09AM 9 sentence which would, as I understand it, essentially be a
10:09AM 10 time-served sentence because of the time that the defendant has
10:09AM 11 already been in custody since his arrest.

10:09AM 12 Where I am within this -- or guided by these two very
10:09AM 13 disparate recommendations is the following:

10:09AM 14 I've looked in particular at all of the defendants
10:10AM 15 that have been sentenced in the Miske Enterprise. I've looked
10:10AM 16 at them, I'm pretty much intimately familiar with all of them
10:10AM 17 because I've sentenced every single one of them with maybe the
10:10AM 18 exception of Tim Taboada. I think Judge Mollway may have
10:10AM 19 sentenced Mr. Taboada. But every other one, to my
10:10AM 20 recollection, was someone that I've sentenced with only one
10:10AM 21 defendant remaining later this summer.

10:10AM 22 I don't disagree with Mr. Nammar's estimation that
10:10AM 23 Mr. Kauhi is the most comparable defendant. We all know that
10:10AM 24 there are no two individuals that are precisely alike, when you
10:10AM 25 just look at offense conduct, that is true. When you start

10:10AM 1 expanding that review to things like criminal history, social
10:11AM 2 history, drug use history and the like, the disparity gets even
10:11AM 3 greater because there is not one factor where two people are
10:11AM 4 precisely the same. When you look at multiple factors that
10:11AM 5 chasm grows.

10:11AM 6 And that is no different here, even using Mr. Kauhi as
10:11AM 7 the most appropriate comparable. His criminal history is not
10:11AM 8 the same, even if his score is the same, the criminal history
10:11AM 9 still is different. The types of offenses, the timing of those
10:11AM 10 offenses are not the same. Shooting someone and mutilating
10:11AM 11 that person's ear is far more violent a history than anything
10:11AM 12 that was in Mr. Kauhi's criminal background as I recall, dated
10:12AM 13 as it might be, as it relates to Mr. Akau.

10:12AM 14 The difference between many of these others who might
10:12AM 15 be considered comparable besides Mr. Kauhi, you might look at
10:12AM 16 Jake Smith, for example, as another; possibly, Michael
10:12AM 17 Buntenbah, given the nature of the violence that was employed,
10:12AM 18 but they too are far, far different in at least a couple of
10:12AM 19 respects that I can think of.

10:12AM 20 Jake Smith provided the type of cooperative testimony
10:12AM 21 on the stand over multiple days that Mr. Akau clearly did not.
10:12AM 22 Michael Buntenbah pled guilty to a completely different count
10:12AM 23 which had a, as I remember it, something like a 36-month, a
10:12AM 24 three-year statutory maximum. So there is only so much that
10:13AM 25 one can glean from that particular person, even though the

10:13AM 1 conduct underlying his offense might very well have been
10:13AM 2 comparable in some respects.

10:13AM 3 When you look at Mr. Kauhi, if you focus on him, he
10:13AM 4 was involved in some of the same racketeering acts as this
10:13AM 5 defendant. He appears to have been a more minor player in
10:13AM 6 comparison to this defendant, as it relates to Elgin Calles, as
10:13AM 7 it relates to Nico Carignan. And, in addition to all of that,
10:13AM 8 Mr. Kauhi received a much, much greater 5K1 departure for his
10:13AM 9 testimony at trial in the Miske case than this defendant
10:14AM 10 deserved.

10:14AM 11 So those would be the principle reasons why Mr.
10:14AM 12 Kauhi's 106-month term of imprisonment would not be an
10:14AM 13 appropriate one for this defendant. It would, if employed
10:14AM 14 here, understate what Mr. Akau deserved, because many of these
10:14AM 15 factors, the critical factors, is not on par with Mr. Kauhi
10:14AM 16 about or with.

10:14AM 17 So where do we end up? When you look at some of the
10:14AM 18 other comparables, Jake Smith is another one that I just
10:14AM 19 mentioned, he received a little bit more than did Mr. Kauhi,
10:14AM 20 121 months. But he too was the beneficiary of a significant 5K
10:14AM 21 departure, seven levels I believe is what he got. Mr. Kauhi
10:15AM 22 got eight levels, if I didn't mention that before. Had this
10:15AM 23 defendant testified in the manner that he had indicated to the
10:15AM 24 government that he would, as suggested by his change of plea
10:15AM 25 hearing, no doubt we would be looking at a minimum of seven

10:15AM 1 levels, probably eight, based on the 15 or 16 sentences that
10:15AM 2 I've already meted out in this case. That is right in the
10:15AM 3 heartland of where testifying defendants have come out in terms
10:15AM 4 of 5K1. And had that been Mr. Akau's situation, we would be
10:15AM 5 looking at a restated offense level of somewhere in the 26th
10:16AM 6 level at criminal history category 3, rather than 33. And at
10:16AM 7 26 criminal history category 3, he would be facing a range or
10:16AM 8 looking at a range of 78 to 97 months. Much, much closer to
10:16AM 9 the time served sentence that he is seeking.

10:16AM 10 We can't end up there. There is no possible way of
10:16AM 11 ending up there and doing justice. He reneged in the way I've
10:16AM 12 already described and affirmatively sought to undermine the
10:16AM 13 government's prosecution of Mr. Miske. The defendant did so,
10:16AM 14 the government, despite that effort, was able to secure
10:16AM 15 convictions on the counts that we have talked about, not on
10:16AM 16 everything of course, we know what the jury did, but on these
10:16AM 17 counts, notwithstanding Mr. Akau's efforts to get in the way of
10:17AM 18 those convictions.

10:17AM 19 You did so for your own reasons. Maybe to mitigate
10:17AM 20 the risks, sir, that Mr. Flores said you were afraid of, it
10:17AM 21 makes sense, I can't -- what's the word I'm looking for --
10:17AM 22 second guess that decision. If that's what the decision was,
10:17AM 23 it makes perfect sense to me. A lot of people make that
10:17AM 24 decision never to take the stand in some cases or to take the
10:17AM 25 stand and then testifying in a way different than what everyone

10:17AM 1 would have expected.

10:17AM 2 We don't have to look any further than Mr. Stancil in
10:17AM 3 this case for doing just that. He didn't take the stand. But
10:17AM 4 there is a price to be paid for that. That's all I can tell
10:17AM 5 you. Everyone who took the stand and testified in the way that
10:18AM 6 the government thought they would get seven levels or more.
10:18AM 7 Mr. Miller got 12 levels. So that was the range of people in
10:18AM 8 your cohort, seven to 12 levels. Had you done so, that's what
10:18AM 9 we would be talking about, and you might be out tomorrow. But
10:18AM 10 you chose not to go that route.

10:18AM 11 And for that reason, the 168-month term of
10:18AM 12 imprisonment, the low end of the restated guideline range
10:18AM 13 recommended by the government, seems to me, in light of all of
10:18AM 14 these factors, to be the appropriate sentence here. Three
10:18AM 15 years of supervised release; no fine, based on financial
10:18AM 16 information at page 28 of the PSR. The defendant does not have
10:18AM 17 the earnings, assets or income stream with which to pay it
10:18AM 18 without it resulting in an undue hardship on him and his
10:19AM 19 family. There is however a \$100 mandatory special assessment
10:19AM 20 that's required by statute.

10:19AM 21 During the period of the defendant's supervised
10:19AM 22 release, the Court intends to adopt all 13 of the standard
10:19AM 23 conditions of release recommended by probation in which
10:19AM 24 probation provided in writing to counsel on February 6th of
10:19AM 25 this year at docket 1845.

10:19AM 1 Any objection to any of those 13 standard conditions
10:19AM 2 as well as any objection to waiving reading of those 13
10:19AM 3 conditions?

10:19AM 4 MR. FLORES: No objection, Your Honor.

10:19AM 5 MR. NAMMAR: No objection.

10:19AM 6 THE COURT: All 13 conditions then, as detailed in
10:19AM 7 probation's writing on February 6th of this year, will be made
10:19AM 8 part of the record and are part of the defendant's release
10:19AM 9 conditions.

10:19AM 10 There are a few mandatory and special conditions that
10:19AM 11 likewise will apply. They include the following:

10:19AM 12 Refraining from the unlawful use of any controlled
10:19AM 13 substance. The defendant also must submit to one drug test
10:19AM 14 within 15 days of the commencement of supervision and at least
10:20AM 15 two drug tests thereafter, but no more than eight valid drug
10:20AM 16 tests per month during the period of his supervision.

10:20AM 17 You must cooperate, Mr. Akau, in the collection of DNA
10:20AM 18 as directed by probation. You must also report to the
10:20AM 19 probation office in the federal judicial district where you are
10:20AM 20 authorized to reside within 72 hours of your release, unless
10:20AM 21 probation instructs you to report to a different office or
10:20AM 22 within a different time frame. These are the mandatory
10:20AM 23 conditions of supervision.

10:20AM 24 There are likewise a few special conditions. They
10:20AM 25 begin with participating in an outpatient substance abuse

10:20AM 1 treatment program. I know that you are well on your way to
10:20AM 2 rehabilitation. Counsel, in your sentencing memorandum,
10:20AM 3 highlighted the fact that you quit, I think were the words,
10:20AM 4 drugs even before you were arrested, but nonetheless I think
10:20AM 5 you still could benefit from an outpatient program. You must
10:20AM 6 follow the rules and regulations of that program. Probation,
10:20AM 7 in consultation with your treatment provider, will supervise
10:20AM 8 your participation in that program regarding a number of issues
10:21AM 9 to include the provider, location, modality, duration, and
10:21AM 10 intensity.

10:21AM 11 As part of your substance abuse treatment, regimen and
10:21AM 12 monitoring, you must submit to substance abuse testing. That's
10:21AM 13 designed to determine if you have used a prohibitive substance
10:21AM 14 and you may not attempt to tamper with or obstruct any of the
10:21AM 15 testing methods that are employed.

10:21AM 16 You are prohibited from using marijuana, synthetic
10:21AM 17 marijuana, any products containing THC or any other products
10:21AM 18 derived from a marijuana plant including for medicinal or
10:21AM 19 business purposes without my prior approval.

10:21AM 20 Unless you have received advanced permission from
10:21AM 21 probation or the association is required by your supervision
10:21AM 22 conditions you must disassociate yourself, if you have not
10:21AM 23 already done so, from any members of the Miske Enterprise. And
10:21AM 24 you may not voluntarily or intentionally associate with any
10:21AM 25 individual whom you know is part of that enterprise or any

10:21AM 1 other gangs involved in criminal activity.

10:21AM 2 You must provide probation with access to any

10:22AM 3 requested financial information and authorize the release of

10:22AM 4 that information including to Mr. Nammar's office. And you

10:22AM 5 must submit your person, property, house, residence, vehicle,

10:22AM 6 papers and office to a search conducted by a U.S. probation

10:22AM 7 officer. The failure to submit to such a search may be grounds

10:22AM 8 for the revocation of your release status. You must warn any

10:22AM 9 occupant or guest that your premises are subject to searches

10:22AM 10 under this condition. Probation may conduct the search under

10:22AM 11 this condition only when reasonable suspicion exists that you

10:22AM 12 have violated a condition of your supervision and that the

10:22AM 13 areas to be searched contain evidence of this violation. Any

10:22AM 14 search must be conducted both at a reasonable time as well as

10:22AM 15 in reasonable manner.

10:22AM 16 Counsel have any reason not already argued why this

10:22AM 17 sentence should not be imposed as proposed?

10:22AM 18 MR. NAMMAR: No, Your Honor.

10:22AM 19 MR. FLORES: No, Your Honor, however, I would ask the

10:22AM 20 Court for a judicial recommendation to a particular facility,

10:22AM 21 Your Honor. FCI Sandstone in Minnesota, Your Honor. There is

10:22AM 22 two reasons for that recommendation: One, it's a medical

10:23AM 23 facility, and again he's concerned about the health issues, and

10:23AM 24 then just this recent news that is potentially much more

10:23AM 25 serious, and also because it's an RDAP facility, Your Honor.

10:23AM 1 So we are asking for a recommendation to an RDAP facility as
10:23AM 2 well.

10:23AM 3 THE COURT: Any specific one or just one with an RDAP
10:23AM 4 program?

10:23AM 5 MR. FLORES: Actually, this facility, FCI Sandstone
10:23AM 6 has both. It's a medical facility and it also has the RDAP
10:23AM 7 program.

10:23AM 8 THE COURT: All right. First of all, the Court orders
10:23AM 9 the imposition of its proposed sentence without objection.

10:23AM 10 It is, Mr. Akau, your right to appeal from the Court's
10:23AM 11 final judgment in this case, which includes the sentence just
10:23AM 12 imposed. If you choose to do that, you should know a few
10:23AM 13 things about your appellate rights.

10:23AM 14 First of all, the timing, if you wish to file a notice
10:23AM 15 of appeal, you must do so within 14 days of the Court's entry
10:23AM 16 of final judgment. I expect final judgment to enter either
10:23AM 17 today or no later than tomorrow. That's important because that
10:23AM 18 will trigger the opening of that 14-day window. If you do not
10:23AM 19 file a notice of appeal within that 14-day window, that will
10:24AM 20 constitute a waiver of your right to appeal.

10:24AM 21 In addition, any appeal that you wish to take is
10:24AM 22 limited by the confines of your appellate waiver provision,
10:24AM 23 which as you know is paragraph 13 of your plea agreement.

10:24AM 24 You are also advised that you are entitled to the
10:24AM 25 assistance of counsel in taking any appeal, and if you cannot

10:24AM 1 afford one, one will be appointed for you by the Court at no
10:24AM 2 cost to you. Similarly, if you cannot afford the cost of any
10:24AM 3 appeal that you wish to take or that you may wish to take, you
10:24AM 4 can apply for what's called in forma pauperis or IFP status.
10:24AM 5 Through that process or through that application, either this
10:24AM 6 Court or the Ninth Circuit Court of Appeals may waive the cost
10:24AM 7 of any appeal that would otherwise apply.

10:24AM 8 Finally, if you wish, the clerk of this Court will
10:24AM 9 prepare and file a notice of appeal on your behalf, but you
10:24AM 10 would in that event remain responsible for any associated
10:25AM 11 costs.

10:25AM 12 With regard to BOP recommendations, you likely know
10:25AM 13 that this Court can make recommendations to the BOP regarding
10:25AM 14 your conditions of confinement, but we cannot dictate those
10:25AM 15 conditions to the BOP. Counsel, Mr. Flores, has already made
10:25AM 16 or asked this Court to make one of those recommendations on
10:25AM 17 your behalf, which is a facility placement recommendation.

10:25AM 18 Mr. Flores, you should consider that done. So FCI
10:25AM 19 Sandstone in Minnesota will be the first priority
10:25AM 20 recommendation; and then secondly, any other facility with an
10:25AM 21 RDAP program would be the Court's second recommendation.

10:25AM 22 Is there something else that you had?

10:25AM 23 MR. FLORES: There is actually a second facility, if
10:25AM 24 you are willing to make that recommendation.

10:25AM 25 THE COURT: Go ahead. Yes.

10:25AM 1 MR. FLORES: It's Seagoville, Your Honor. It's
10:25AM 2 spelled S-E-A-G-O, ville, Texas. And that also has an RDAP
10:25AM 3 program as well, Your Honor.

10:25AM 4 THE COURT: All right. So we will do FCI Sandstone,
10:26AM 5 number one; Seagoville in Texas, number two; and then third,
10:26AM 6 any other facility -- you want Honolulu?

10:26AM 7 THE DEFENDANT: Yes.

10:26AM 8 THE COURT: That's unlikely, to be honest, but I don't
10:26AM 9 mind including it. It doesn't hurt to include it.

10:26AM 10 THE DEFENDANT: I have another one, Your Honor.

10:26AM 11 THE COURT: Go ahead.

10:26AM 12 MR. FLORES: FCI Allenwood, Your Honor. It's
10:26AM 13 Allenwood, Pennsylvania.

10:26AM 14 THE COURT: All right. And that's the third in
10:26AM 15 priority? Honolulu does not have an RDAP program, I don't
10:26AM 16 believe. Is that what you want, Seagoville, second; Allenwood,
10:26AM 17 Pennsylvania, third?

10:27AM 18 THE DEFENDANT: Yes.

10:27AM 19 THE COURT: And then fourth will be any other BOP
10:27AM 20 facility with an RDAP program. Would that be acceptable?

10:27AM 21 MR. FLORES: Yes, Your Honor.

10:27AM 22 THE COURT: Substance abuse treatment would be also
10:27AM 23 part of the Court's recommendation including the RDAP program
10:27AM 24 that we've mentioned, mental health assessment, and any
10:27AM 25 necessary treatment and educational and vocational programming

10:27AM 1 will also all be part of the Court's recommendation to the BOP.

10:27AM 2 Mr. Nammar, does the government have a motion to
10:27AM 3 dismiss that it wishes to make?

10:27AM 4 MR. NAMMAR: Yes. Pursuant to paragraph four of the
10:27AM 5 plea agreement the government moves to dismiss Counts 16, 17,
10:27AM 6 18 and 19 as to this defendant.

10:27AM 7 THE COURT: I assume no objection from the defense?

10:27AM 8 MR. FLORES: No, Your Honor.

10:27AM 9 THE COURT: Pursuant to the government's motion then
10:27AM 10 in paragraph 4 of the party's plea agreement, Count 16 through
10:27AM 11 19 of the superseding indictment are dismissed as to this
10:27AM 12 defendant.

10:27AM 13 Defendant has been in custody since July, it looks
10:27AM 14 like, of 2020 and is remanded to the marshals service and the
10:27AM 15 Bureau of Prisons.

10:27AM 16 Anything else that I can assist the parties with?

10:27AM 17 MR. NAMMAR: No, Your Honor.

10:27AM 18 MR. FLORES: No, Your Honor. Thank you.

10:27AM 19 THE COURT: We are in recess.

10:28AM 20 (Proceedings were concluded at 10:28 a.m.)

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COURT REPORTER'S CERTIFICATE

I, Gloria T. Bediamol, Official Court Reporter, United States District Court, District of Hawaii, do hereby certify that pursuant to 28 U.S.C. §753 the foregoing is a complete, true, and correct transcript from the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

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10 DATED at Honolulu, Hawaii, June 13, 2025.

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13 /s/ Gloria T. Bediamol

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15 RMR, CRR, FCRR

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